

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

DORIS COLE,)
vs. Plaintiff,)
THE KROGER CO. and BROMONT)
PROPERTY MANAGEMENT, LLC,)
Defendants.) Case No. 08-cv-0217-MJR

ORDER AND MEMORANDUM

REAGAN, District Judge:

Plaintiff Doris Cole has moved to strike Exhibit B of Defendant The Kroger Company's motion for summary judgment (Doc. 18). The material targeted in the motion to strike is a document that was not authenticated by affidavit in Kroger's motion so as to be admissible as evidence.

Cole submits that the introductory paragraph to the exhibit - a contract between K & E Development Co. and Kroger - contains obvious redactions, making it unclear who the parties to the contract are. Rather than offering a supplemental affidavit that authenticates the challenged document, Kroger contends that the Court may admit an unauthenticated document if it bears the aura of reliability.

A court generally should not rely on unsworn or unauthenticated documents in deciding a summary judgment motion. *See FED. R. CIV. P. 56(e); Markel v. Bd. of Regents of Univ. of Wisconsin System, 276 F.3d 906, 912 (7th Cir. 2002); see also, e.g., Timas v. Klaser, 2000 WL 684191, 1 (S.D.Ind. 2000)* (“To be admissible, documents must be authenticated by and attached to an affidavit that meets the requirements of Rule 56(e), and the affiant must

be a person through whom the exhibits could be admitted into evidence.”) (citations omitted).

The Court agrees with Cole that the first paragraph of the contract may have been redacted, and its meaning is not clear. In summary judgment practice, in this Court's experience, it is not unusual for unauthenticated documents to be submitted; however, when a well-taken objection is raised, the offering party must attempt to cure the problem by authenticating the document with an affidavit.

Accordingly, the Court **GRANTS** Cole's motion to strike Exhibit B of The Kroger Company's motion for summary judgment. Kroger may refile this exhibit with an authenticating affidavit on or before February 13, 2009.

IT IS SO ORDERED.

DATED this 28th day of January, 2009

s/Michael J. Reagan
MICHAEL J. REAGAN
United States District Judge